

A Pantai Bayu Emas Sdn Bhd & Ors v Southern Bank Bhd

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(I)–6 OF
2008(Q)
ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA) AND ZULKEFLI
FCJ
23 JANUARY 2009

C *Banking — Banks and banking business — Banking Licence — Transfer of
banking business — Vesting order to transfer banking business — Section 50 of
the Banking and Financial Institutions Act 1989 — Scope and purpose of s 50
— Construction of — Banking and Financial Institutions Act 1989 s 50*

D *Civil Procedure — Judgments and orders — Judgment — Whether order of
Malaysian High Court has full force and effect anywhere in Malaysia — Whether
order made by High Court in Malaya effective in Sabah and Sarawak — Courts
of Judicature Act 1964 s 7(2) — Federal Constitution arts 74, 121(3)*

E *Civil Procedure — Jurisdiction — High Court — Jurisdiction to try civil
proceedings — Whether ‘jurisdiction to try’ includes making of vesting orders —
Whether s 23(1) of the Courts of Judicature Act 1964 excludes operation of order
made by High Court, in ‘local jurisdiction’ of another High Court — Whether
s 23(1) of the Act would render ineffectual vesting order made by the High Court
in Malaya in respect of assets and liabilities in Sabah and Sarawak — Courts of
Judicature Act 1964 s 23(1)*

G The respondent filed a suit in the High Court in Sabah and Sarawak at
Kuching (‘the Kuching Suit’) against the appellants to recover amounts owing
under banking facilities granted to the first appellant. The respondent had
separately assigned to CIMB all its rights, assets and liabilities. Following
H such assignment, the respondent and CIMB obtained from the High Court
in Malaya at Kuala Lumpur, a vesting order under the Banking and Financial
Institutions Act 1989 (‘BAFIA’). The respondent and CIMB then applied in
the Kuching suit to substitute CIMB as the plaintiff in place of the
respondent. The appellants objected to the application and applied to strike
I out the Kuching suit on, inter alia, the basis that the vesting order was
incompetent and that CIMB did not have the requisite locus standi. The
High Court dismissed the appellants’ application but granted the respondent
and CIMB the order for substitution. The appellants’ appeal to the Court of
Appeal was dismissed but the appellants obtained leave to appeal to the

Federal Court. The issue for the Federal Court's determination was whether the vesting order made by the High Court in Malaya at Kuala Lumpur pursuant to s 50 of the BAFIA, was effective in relation to the respondent's assets and liabilities in Sabah and Sarawak.

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Held, dismissing the appellants' appeal with costs:

- (1) The appellants had clearly based their application on the decision of *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551. In *Lee Hui Jian*, the High Court in Sabah and Sarawak at Sibu, inter alia, held a vesting order made by the High Court in Malaya at Kuala Lumpur under s 50 of the BAFIA, ineffectual in transferring to the plaintiff the transferor's business in Sibu, Sarawak. In the instant case, the Federal Court would agree with the decision of the Court of Appeal that the High Court had erred in *Lee Hui Jian* and that the decision ought to be overruled (see paras 18, 23 & 24).
- (2) Section 23(1) of the Courts of Judicature Act 1964 ('CJA') deals with the 'jurisdiction to try', which is founded on certain jurisdictional facts enumerated under paras (a) to (d) therein. Section 23(1) does not deal with, nor is it intended to regulate the efficacy of a vesting order. It does not in any way exclude the operation of an order, made by one High Court, in the 'local jurisdiction' of another High Court. Section 23(1) does not exclude the operation, in Sabah and Sarawak, of a vesting order made by the High Court in Malaya at Kuala Lumpur. The efficacy of vesting orders made by both High Courts (Malaya and Sabah and Sarawak) is prescribed by ss 50(1), (3), (4), (6) and (7) of the BAFIA; 7(2) of the CJA and art 121(3) of the Federal Constitution ('Constitution') (see para 25).
- (3) The intention of the law expressed in s 50(1), (3), (4), (6) and (7) of the BAFIA as a whole is to regulate the application for a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from a predecessor bank to a successor bank. The intention is not to create obstacles to stand in the way of substantial justice (see para 27).
- (4) Section 7(2) of the CJA provides, inter alia, for an order of court to have full force and effect anywhere within Malaysia. The status of s 7(2) of the CJA is further elevated and enhanced by art 121(3) of the Constitution. Article 121(3) of the Constitution provides for any order or judgment to have full force and effect according to its terms throughout all the territories constituting the federation, ie Malaya, Sabah and Sarawak. It also enables federal law to provide for one High Court to act in aid of the other art 74(1) of the Constitution further

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- A provides that Parliament may make laws with respect to any matters enumerated in the First or Third List of the Ninth Schedule thereto (ie the Federal List or Concurrent List). Item 7(j) of the First List (Federal List) provides that matters of Finance including Banking matters fall under the purview of the Federal Government. Thus BAFIA, a federal
- B legislation, applies throughout Malaysia. The vesting order in the instant case was effectual in transferring the business of the respondent located in any part of Malaysia to CIMB and was effective throughout the whole of Malaysia (see paras 37, 38, 40, 42 & 43).

C **[Bahasa Malaysia summary]**

- D Responden telah memfailkan suatu tindakan guaman dalam Mahkamah Tinggi di Sabah dan Sarawak di Kuching ('tindakan guaman Kuching') terhadap perayu-perayu untuk mendapatkan semula jumlah yang dihutang di bawah kemudahan perbankan yang diberikan kepada perayu pertama.
- E Responden secara berasingan telah menyerahkan kepada CIMB kesemua hak-haknya, aset-asetnya dan liabilitinya. Berikutan penyerahanhak tersebut, responden dan CIMB telah memperoleh dari Mahkamah Tinggi di Malaya di Kuala Lumpur, satu perintah letakhak di bawah Akta Bank dan
- F Institusi-Institusi Kewangan 1989 ('BAFIA'). Responden dan CIMB kemudiannya telah memohon dalam tindakan guaman Kuching agar CIMB digantikan sebagai plaintif bagi menggantikan responden. Perayu-perayu membantah permohonan tersebut dan memohon untuk pembatalan tindakan guaman Kuching atas alasan, antara lain, bahawa perintah letakhak tidak ada kesan dan CIMB tidak mempunyai locus standi yang diperlukan.
- G Mahkamah Tinggi telah menolak permohonan perayu-perayu tetapi memberikan responden dan CIMB perintah untuk penggantian. Rayuan perayu-perayu kepada Mahkamah Rayuan telah ditolak tetapi perayu-perayu telah memperolehi kebenaran untuk merayu kepada Mahkamah Persekutuan. Isu yang harus diputuskan oleh Mahkamah Persekutuan adalah sama ada suatu perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur di bawah s 50 BAFIA, adalah berkesan terhadap aset-aset dan liabiliti responden di Sabah dan Sarawak.

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Diputuskan, rayuan perayu-perayu ditolak dengan kos:.

- I (1) Perayu-perayu jelas telah membuat permohonan mereka berasaskan keputusan *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551. Dalam kes *Lee Hui Jian*, Mahkamah Tinggi Sabah dan Sarawak di Sibul, antara lain, memutuskan bahawa perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur di bawah s 50 BAFIA, tidak berkesan dalam memindah kepada plaintif perniagaan pemindah di Sibul, Sarawak. Dalam kes ini, Mahkamah Persekutuan bersetuju

- dengan keputusan Mahkamah Rayuan bahawa Mahkamah Tinggi telah terkhilaf dalam kes *Lee Hui Jian* dan keputusan tersebut harus ditolak (lihat perenggan 18, 23 & 24). **A**
- (2) Seksyen 23(1) Akta Mahkamah Kehakiman 1964 ('AMK') adalah berkaitan dengan 'jurisdiction to try', yang berasaskan kepada fakta bidang kuasa tertentu yang dinyatakan di bawah perenggan (a) hingga (d). Seksyen 23(1) tidak berkaitan dengan dan tidak diniatkan untuk mengawalselia keberkesanan sesuatu perintah letakhak. Ia tidak menghalang operasi suatu perintah yang dibuat oleh Mahkamah Tinggi ke 'bidangkuasa tempatan' Mahkamah Tinggi yang lain. Seksyen 23(1) tidak menghalang pelaksanaan di Sabah dan Sarawak suatu perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur. Keberkesanan perintah-perintah letakhak yang dibuat oleh kedua-dua Mahkamah Tinggi (Malaya dan Sabah dan Sarawak) diperuntukkan oleh ss 50(1), (3), (4), (6) dan (7) BAFIA; 7(2) AMK dan pekara 121(3) Perlembagaan Persekutuan ('Perlembagaan') (lihat perenggan 25). **B**
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- (3) Niat undang-undang yang terserlah dari s 50 (1), (3), (4), (6) dan (7) BAFIA adalah untuk mengawalselia pemakaian sesuatu perintah letakhak dan untuk memudahkan pemindahan yang berkesan terhadap kesemua atau sebahagian perniagaan, aset-aset, hak-hak dan liabiliti-liabiliti dari bank terdahulu kepada bank pengganti. Niatnya bukan untuk mencipta halangan-halangan terhadap keadilan substantial (lihat perenggan 27). **E**
- (4) Seksyen 7(2) AMK memperuntukkan, antara lain, bahawa perintah yang dibuat oleh mahkamah hendaklah mempunyai kuatkuasa and kesan sepenuhnya di mana jua di dalam Malaysia. Status s 7(2) AMK selanjutnya diangkat dan dimantapkan oleh pekara 121(3) Perlembagaan. Pekara 121(3) Perlembagaan memperuntukkan bahawa mana-mana perintah atau penghakiman hendaklah mempunyai kuatkuasa dan kesan sepenuhnya menurut termannya ke atas keseluruhan wilayah dalam persekutuan, iaitu Malaya, Sabah dan Sarawak. Ia juga membolehkan undang-undang persekutuan membuat peruntukan bagi membolehkan sesebuah Mahkamah Tinggi bertindak untuk membantu Mahkamah Tinggi yang lain. Pekara 74(1) Perlembagaan selanjutnya memperuntukkan bahawa Parlimen boleh membuat undang-undang berkaitan mana-mana perkara yang disenaraikan di dalam senarai Pertama atau Ketiga Jadual Kesembilan (iaitu Senarai Persekutuan atau Senarai Bersama). Item 7(j) Senarai Pertama (Senarai Persekutuan) memperuntukkan bahawa perkara-perkara mengenai kewangan termasuk perkara perbankan jatuh di bawah kuasa kerajaan persekutuan. Oleh itu, BAFIA, sebagai undang-undang persekutuan, adalah terpakai ke seluruh Malaysia. Perintah letakhak dalam kes ini adalah berkesan untuk memindahkan **F**
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- A perniagaan responden yang terletak di mana-mana bahagian Malaysia kepada CIMB Bank dan berkesan bagi seluruh Malaysia (lihat perenggan 37, 38, 40, 42 & 43).]

Notes

- B For a case on judgment, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 4148.
For cases on banking licence, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1880–1882.
For cases on High Court, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4625–4627.
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Cases referred to

- Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, FC (folld)
- D *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah* [1996] 1 MLJ 617, Special Court (folld)
Lee Hui Jian (f) v Public Bank Bhd [2007] 2 CLJ 551, HC (ovrd)
Leong Moh Sawmill Co Sdn Bhd (In Liquidation) v Standard Chartered Bank & Ors [1996] 2 MLJ 614, CA (refd)
- E *PP v Mohd Noor bin Jaafar* [2005] 6 MLJ 745, HC (folld)
Phileo Allied Bank (M) Bhd v Koshish Credit & Leasing Sdn Bhd [2002] 1 MLJ 245, HC (refd)
Socoil Corporation Bhd v Ng Foo Chong & Anor [1984] 2 MLJ 85, PC (refd)
- F *Socoil Corporation Bhd v Ng Foo Chong & Anor* [1981] 2 MLJ 7, FC (refd)
Standard Chartered Bank Malaysia Bhd v Eden Enterprises (M) Bhd [2003] 3 MLJ 81, HC (refd)
Sukma Darmawan Susmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor [1999] 1 MLJ 266, CA (folld)
- G *Tong Aik (Far East) Ltd v Eastern Minerals and Trading [1959] Ltd* [1965] 2 MLJ 149, FC (refd)

Legislation referred to

- Banking and Financial Institutions Act 1989 s 50, 50(1), (3), (4), (6), (7)
H Courts of Judicature Act 1964 ss 7(2), (3), 23(1)
Rules of the High Court 1980 O 14, O 15 r 7(2)
James Lo (George Lo & Partners) for the appellants.
Sim Hui Chuang (Lim Lit Sze with him) (Reddi & Co) for the respondent.

I Alauddin PCA:

[1] On 15 June 2007, the learned judge of the High Court in Sabah and Sarawak at Kuching dismissed the summons in chambers of the appellants

who sought to strike out the respondent's writ and statement of claim. Meanwhile, the High Court allowed the respondent's summons in chambers for substitution. A

[2] The appellants then appealed to the Court of Appeal and on 28 January 2008, the Court of Appeal dismissed the appellants' appeal with costs. B

[3] Dissatisfied with the above decision the appellants sought leave to appeal to the Federal Court. C

[4] On 24 March 2008, the appellants were granted leave to appeal by the Federal Court.

[5] The question of law for which leave was granted is: D

Whether a vesting order made by the High Court in Malaya pursuant to s 50 of the Banking and Financial Institutions Act 1989 (BAFIA) is effectual in transferring to and vesting in the transferee, all the transferor's rights, assets and liabilities including all legal proceedings involving the transferor in Sabah and Sarawak. E

BACKGROUND FACTS

[6] The first appellant is a borrower under a banking facilities granted by the respondent and guaranteed by three guarantors, two of whom are the second and third appellants. F

[7] The respondent filed a suit in the High Court in Sabah and Sarawak at Kuching ('the Kuching Suit') against the appellants to recover the amounts owing under the banking facilities. G

[8] By an agreement entered into between the respondent and CIMB Bank Bhd ('CIMB Bank'), the respondent assigned to CIMB Bank all its rights, assets and liabilities including all legal proceedings with effect from 1 November 2006. Following such assignment, the respondent and CIMB Bank made a joint application to the High Court in Malaya at Kuala Lumpur, pursuant to BAFIA and obtained a vesting order on 6 September 2006 ('the vesting order'). H I

[9] Based on the vesting order, the respondent and CIMB Bank made an application in the Kuching suit for substitution of the respondent by CIMB Bank as the plaintiff ('the substitution application').

A [10] The appellants then filed an application to strike out the Kuching suit ('the striking out application') on the grounds that:

(a) the vesting order is incompetent to effect the transfer of the respondent's claim to CIMB Bank; and

B (b) CIMB Bank does not have the requisite locus standi in the Kuching suit.

[11] Both the aforesaid applications revolve around the legal effect of the vesting order.

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[12] The High Court:

(i) granted the order for substitution; and

(ii) dismissed the striking out application.

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[13] The appellants appealed to the Court of Appeal. The Court of Appeal dismissed the appellants' appeal and affirmed the decision of the High Court.

E [14] Hence, the appellants' appeal to this court on the question of law as stated in para 5 above.

ISSUE

F [15] The issue for determination by this court is as stated in the question of law posed ie 'Whether a vesting order made by the High Court in Malaya pursuant to s 50 of the BAFIA 1989 is effectual in transferring to and vesting in the transferee, all the transferor's rights, assets and liabilities including all legal proceedings involving the transferor in Sabah and Sarawak.'

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DISCUSSION AND RESOLUTION OF THE ISSUE

Decisions at the High Court and Court of Appeal

H [16] As pointed out by the Court of Appeal at paras 14–19 of their judgment, there are two divergent views at the High Court level.

[17] In *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551, a similar vesting order made under s 50 was considered by Linton Albert J of the High Court in Sabah and Sarawak at Sibu.

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[18] In that case, His Lordship held that:

(1) the vesting order given by the High Court in Malaya at Kuala Lumpur

- must of necessity be ineffectual in transferring to the plaintiff the Finance Company's business assets and liabilities in Sibul, Sarawak; and
- (2) the vesting order could only have been effectual if it had been made by the High Court in Sabah and Sarawak.

[19] We note that in *Lee Hui Jian*, the learned judge had recognised the jurisdiction of the High Court in Malaya at Kuala Lumpur to make the vesting order, but was unable to sustain the extent and applicability of the vesting order beyond the territorial jurisdiction of the High Court in Malaya.

[20] The appellants in the present appeal grounded their striking out application at the High Court upon the case of *Lee Hui Jian* (see grounds of application at p 86 of the record of appeal).

[21] A diametrically opposite view was given in the judgment which is now the subject matter of the instant appeal. Clement Skinner J of the High Court in Sabah and Sarawak at Kuching held that the vesting order is effectual to transfer and vest in CIMB Bank all the respondent's rights, assets and liabilities in any part of Malaysia including all legal proceedings involving the respondent to CIMB Bank throughout the whole of Malaysia.

[22] His Lordship's decision is based on the interpretation of s 50 of the BAFIA and the application of art 121(3) of the Federal Constitution and s 7(2) of the Courts of Judicature Act 1964 ('CJA'). Article 121(3) of the Federal Constitution, s 7(2) of the CJA and the analysis of s 50 of the BAFIA were never considered in *Lee Hui Jian*.

[23] In *Lee Hui Jian*, the learned judge made reference to s 50 of the BAFIA and s 23(1) of the CJA. The correctness or otherwise of the decision in *Lee Hui Jian*, depends on whether s 50 and s 23(1) have been correctly applied by the learned judge. The Court of Appeal decided they were not.

[24] The Court of Appeal resolved these divergent views by holding that the decision in *Lee Hui Jian*, has fallen into error and is overruled. We agree.

OUR FINDINGS

[25] We note that s 23(1) of the CJA deals with the 'jurisdiction to try', which in turn is founded on certain jurisdictional facts as enumerated in paras (a) to (d) therein. To our minds s 23(1) does not deal with nor is it intended to regulate the efficacy of a vesting order. Further, it does not in any way exclude the operation of an order, made by one High Court, in the 'local

- A jurisdiction' of another High Court. In other words, s 23(1) does not exclude the operation, in Sabah and Sarawak, of the vesting order made by the High Court in Malaya at Kuala Lumpur. The efficacy or effect of the orders of the two High Courts, viz the High Courts in Malaya and the High Courts in Sabah and Sarawak are provided in s 50(1), (3), (4), (6) and (7) of the BAFIA;
- B s 7(2) of the CJA and art 121(3) of the Federal Constitution.

[26] Although s 50(1), (3), (4), (6) and (7) of the BAFIA had been considered in *Lee Hui Jian* s 7(2) and art 121(3) had not been. We feel that these written laws require a more elaborate consideration.

- C [27] In our judgment, the intention of the law expressed in ss 50(1), (3), (4), (6) and (7) as a whole is to regulate the application for a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the predecessor bank to the successor bank, and not
- D to create obstacles to stand in the way of substantial justice.

[28] We note that s 50(1) of the BAFIA envisages only one application to be made as the language used is 'a joint application to the High Court' and 'in such application'.

- E [29] Section 50(3) provides for the mechanism of vesting of the assets and business of one entity in the other by the making of one order of the High Court. The vesting order shall have effect according to its terms
- F 'notwithstanding anything in any law or rule of law'.

- G [30] The expression 'notwithstanding anything in any law or in any rule of law' ('the expression') in s 50(3) has received extensive recognition and explanation in several cases (see *Leong Moh Sawmill Co Sdn Bhd (In Liquidation) v Standard Chartered Bank & Ors* [1996] 2 MLJ 614; *Phileo Allied Bank (M) Bhd v Koshish Credit & Leasing Sdn Bhd* [2002] 1 MLJ 245 and *Standard Chartered Bank Malaysia Bhd v Eden Enterprises (M) Bhd* [2003] 3 MLJ 81).

- H [31] In *Leong Moh Sawmill Co Sdn Bhd (In Liquidation)*, the issue is whether a foreign bank, the Standard Chartered Bank ('the predecessor bank') can continue to pursue matters relating to foreclosure proceedings in its name after it had already sold all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd ('the successor bank') pursuant to a vesting order made under s 50(1). In view of the expression in s 50(3), Siti Norma
- I Yaakob JCA (later CJ (M)) held, inter alia, as follows:

- (a) the vesting order was such that there was no requirement for a formal order of substitution under O 15 r 7(2) of the Rules of the High Court 1980;

- (b) the successor bank was deemed to be a party in all proceedings initiated by or commenced against the predecessor bank; and A
- (c) the transfer of any property or business pursuant to the vesting order shall not and from the transfer date become vested in or held by the transferee ie a transmission of interest from one legal entity to another. B

[32] In *Standard Chartered Bank Malaysia Bhd*, the Standard Chartered Bank, (the predecessor bank) agreed to give the defendant banking facilities. The plaintiff is the successor bank under s 50. On the defendant's default, the successor bank sued for and obtained, from the registrar, summary judgment under O 14 of the Rules of the High Court 1980 for the outstanding debt. On appeal to the judge in chambers, Selenthiranathan J also followed *Leong Moh Sawmill Co Sdn Bhd (In Liquidation)*, and held, inter alia (at p 90), that:

The relevant provisions of the Act in this context are enabling in nature and not prohibitory in that they made possible the transfer of SCB's business in Malaysia as a whole to the plaintiff through a single application to the High Court, thereby obviating the need for a piecemeal transfer of the assets and liabilities related to the said business. D

[33] Next, s 50(4) provides for the vesting order to be published in not less than two daily newspapers in Malaysia. This is clearly intended to give nationwide publicity to the vesting order and to give nationwide effect to it. If the intention had been otherwise than there would have been no reason to stipulate or ensure publication in Malaysia as a mandatory requirement thereunder. E

[34] Further, s 50(6) contains mandatory provisions which are applicable in all the territories of Malaysia viz Malaya, Sabah and Sarawak, by way of 'an order of the High Court' ie one and the same order. F

[35] Finally, s 50(7) not only empowers the vesting order to cover property or business outside Malaysia, but also specifies how, after a vesting order has been made, effect may be given to that order or how it could be enforced either by way of reciprocal enforcement of judgments between Malaysia and the foreign country, territory or place outside Malaysia; or in accordance with the law of the foreign country, territory or place. So much for BAFIA. G

[36] We shall now examine the relevance of s 7(3) of the CJA and art 121(3) of the Federal Constitution in the context of this appeal. H

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A [37] Subsection (2) of s 7 of the CJA provides that:

All writs, summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by the authority of the Court respecting any cause or matter within its jurisdiction *shall have full force and effect and may be served or executed anywhere within Malaysia.*

B

[38] The status of s 7(2) of the CJA is further elevated and enhanced by the provision of art 121(3) of the Federal Constitution which provides:

C (3) Subject to any limitations imposed by or under federal law, any order, decree, judgment or process of the courts referred to in Clause (1) or of any judge thereof shall (so far as its nature permits) have *full force and effect according to its tenor throughout the Federation*, and may be *executed or enforced in any part of the Federation*, accordingly; and federal law may provide for *courts in one part of the Federation or their officers to act in aid of courts in another part.*

D

E [39] The intention and implication of art 121(3) may be determined by reference to the relevant principles of constitutional interpretation (see *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah* [1996] 1 MLJ 617; *Public Prosecutor v Mohd Noor bin Jaafar* [2005] 6 MLJ 745 and *Sukma Darmawan Susmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor* [1999] 1 MLJ 266).

F [40] Having read the above cases and applying the principles or constitutional interpretation referred to therein we are of the view that art 121(3) clearly provides for any order or judgment to have full force and effect according to its terms throughout all the territories constituting the federation ie Malaya, Sabah and Sarawak. It also enables federal law to provide for one High Court to act in aid of the other.

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H [41] For the effect of art 121(3) of the Federal Constitution, see the Federal Court case of *Tong Aik (Far East) Ltd v Eastern Minerals and Trading* [1959] Ltd [1965] 2 MLJ 149. See also the obiter dicta of the Privy Council in *Socooil Corporation Bhd v Ng Foo Chong* [1984] 2 MLJ 85 at p 86 whereby the provision of art 121(3) were acknowledged. See also the decision of the Federal Court in *Socooil Corporation Bhd v Ng Foo Chong & Anor* [1981] 2 MLJ 7 at p 9.

I [42] For completeness we feel it is also appropriate to refer to art 74(1) of the Federal Constitution which provides that Parliament may make laws with respect to any matters enumerated in the First or Third List of the Ninth Schedule thereto (ie the Federal List or Concurrent List). Item 7(j) of the First List (Federal List) provides that matters of finance including banking matters

fall under the purview of the Federal Government. Thus BAFIA, a federal legislation, applies throughout Malaysia.

A

CONCLUSION

[43] On the foregoing grounds, we hold that the vesting order is effectual in transferring the business of Southern Bank located in any part of Malaysia to CIMB Bank and is effective throughout the whole of Malaysia.

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[44] The answer to the above question for determination by this court must therefore be in the affirmative.

C

[45] Hence, with utmost respect, we agree with the decision of the Court of Appeal that the decision in *Lee Hui Jian*, has fallen into error and is overruled.

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ORDER

[46] In the circumstances, the appellants' appeal is hereby dismissed with costs. The decision of the Court of Appeal dismissing the appellants' appeal is affirmed. Deposit to the respondent on account of taxed costs.

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Appeal dismissed with costs.

Reported by Andrew Christopher Simon

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